IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4496 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AMIT TANSUKHBHAI VANI

Versus

UNION OF INDIA

Appearance:

MR VM DHOTRE for Petitioner.

MS PJ DAVAWALA for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE N.G.NANDI

Date of decision: 08/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Rule. Ms. P.J. Davawala waives service of Rule

on behalf of the respnodents.

2. Admittedly, in the select list the initially the petitioner was at No.3 and one Shri H.S. Parmar was at No.2. However the appointment was not offered to Mr. H.S. Parmar and it was given to the present petitioner on the ground that he (Mr. H.S. Parmar) did not reside in Ahmedabad. It was then felt that residing at Ahmedabad was not a condition for giving appointment and therefore the appointment ought to have been offered to Shri H.S. Parmar instead of the petitioner. On this ground the present petitioner was subjected to an order of termination by giving him a notice of one month. The petitioner approached the Central Administrative Tribunal against the order of his termination but within the period of one month before the termination could be effective the CAT granted stay against his termination and this is how the petitioner continued in service. It is given out by learned counsel for the petitioenr that Shri H.S. Parmar had moved an application for being impleaded as a party in the petitioner's Original Application before the CAT but later on he withdrew his application and did not press the same. The CAT rejected the petitioner's Original Application on 7th June 2001 and the petitioner has filed the present Special Civil Application challenging the order dated 7th of June 2001 passed by the CAT.

3. Learned counsel for the petitioner has further submitted that said Shri H.S. Parmar was already working as a Livestock Inspector in Animal Husbandry Department at Kalavad and it has also been submitted that the post of Livestock Inspector in Animal Husbandry department is a post of higher pay than that of Extra-Departmental Mail Man, i.e., the post in question for which the appointment was given to the petitioner. There is no dispute about the fact that Shri H.S. Parmar has secured 78.57% of marks in HSC whereas the petitioner has secured 77.57% marks.

4. Be that as it may in case Shri H.S. Parmar is not willing to join on the post in question, i.e., Extra Departmental Mail Man in normal course, it is the petitioner's turn because he was the next man in the select list. The factual position is, that after the CAT's order dated 7th of June 2001, the petitioner has been relieved on 3rd of August 2001 during the pendency of this petition and after the issue of the notice in this petition on 25th of June 2001 which was made returnable on 29th of June 2001 and after the reply dated 17th July 2001 which has been filed in these proceedings

before this Court by the respondents.

5. Shri H.S. Parmar was not a party either before the CAT or in these proceedings.

6. In the facts and circumstances, as stated hereinabove, we direct that the respondents to offer appointment to Mr. H.S. Parmar within a period of 10 days from the date of receipt of certified copy of this order and grant him reasonable time for the purpose of joining on this post and Shri H.S. Parmar may be called upon to apprise the department as to whether he is willing and prepared to join as "EDMM". In case he joins on this post of "EDMM" within permissible time under the rules, that will be the end of the matter. In case he does not join within permissible limits, the respondents shall pass appropriate orders in accordance with law with regard to the relegation of the present petitioner on the post of Extra Departmental Mail Man as if he had not been releived and had continued in service except for the purpose of no payment for the period for which he may not have worked on the principle of `no pay for no work'. In adopting the aforesaid course of action, the impugned order dated 7th June 2001 passed by the CAT shall be no legal impediment against the departmental authorities. With the observations and directions as aforesaid, this Special Civil Application is partly allowed and the Rule is made absolute accordingly. No order as to costs.

[M.R. Calla, J.]

rmr. [N.G. Nandi, J.]